

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: William MacLure	Team: Squad #6	CCRB Case #: 201810357	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 12/12/2018 6:28 PM	Location of Incident: Lincoln Terrace Park	Precinct: 77	18 Mo. SOL 6/12/2020	EO SOL 1/27/2021	
Date/Time CV Reported Thu, 12/13/2018 10:21 AM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Thu, 12/13/2018 11:16 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Daniel Oh	02508	953195	071 PCT
2. POM Stephen Schmitt	12418	956245	071 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Stephen Schmitt	Abuse: Police Officer Stephen Schmitt frisked § 87(2)(b)	
B.POM Daniel Oh	Abuse: Police Officer Daniel Oh frisked § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		

Case Summary

On December 13, 2018, § 87(2)(b) walked into the CCRB and filed this complaint.

On December 12, 2018, at approximately 6:28 p.m., § 87(2)(b) was sitting on a bench inside Lincoln Terrace Park, in Brooklyn. PO Daniel Oh and PO Stephen Schmitt, of the 71st Precinct, approached § 87(2)(b) and told him that he could not be in the park after dusk. PO Schmitt frisked § 87(2)(b) after PO Oh told him to (**Allegations A and B: Abuse of Authority**, § 87(2)(g)). PO Oh wrote § 87(2)(b) a summons for § 87(2)(b) (Board Review 01).

Body worn camera footage of this incident was received from the NYPD (Board Reviews 02 through 06).

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Stephen Schmitt frisked § 87(2)(b)

Allegation (B) Abuse of Authority: Police Officer Daniel Oh frisked § 87(2)(b)

§ 87(2)(g)

It is undisputed that § 87(2)(b) was sitting on a bench alone inside the park after dusk and that it was dark. It is also undisputed that PO Schmitt frisked § 87(2)(b) (Board Review 07) was wearing a hoodie and a jacket with nothing in any of his pockets. § 87(2)(b) had no weapons or bulges. § 87(2)(b) had his laptop bag with him and was looking at his phone while sitting on the bench before the officers approached. PO Oh and PO Schmitt asked § 87(2)(b) to stand up, remove his hands from his pockets, and provide his ID. § 87(2)(b) complied with the officers' instructions and asked them what the problem was. PO Schmitt frisked § 87(2)(b) by patting the outside of his waistband and pockets.

PO Schmitt (Board Review 08) and PO Oh observed § 87(2)(b) in the park as part of their patrol duties. They did not receive a call or were otherwise called over in regards. PO Schmitt and PO Oh initially approached only to instruct § 87(2)(b) to leave the park and not to issue a summons. When the officers told § 87(2)(b) that the park was closed and he had to leave, he responded saying that they were making up the rules and oppressing him. At this point the officers decided to issue him a summons because he was disobeying a lawful order to leave the park. § 87(2)(b) was wearing a large winter coat with a hoodie underneath. PO Schmitt thought that § 87(2)(b)'s winter coat was too large for him. § 87(2)(b) was fidgeting while speaking with officers. § 87(2)(b) had his hands in his coat pockets and PO Schmitt could see movement in the pockets. PO Schmitt asked § 87(2)(b) to stand up so he could check his pockets. § 87(2)(b) took his hands out of his pockets. PO Schmitt felt the outside of both of § 87(2)(b)'s jacket pockets to make sure that he did not have a weapon on him. PO Schmitt then felt § 87(2)(b)'s waistband to check for weapons. PO Schmitt did not recover anything from the frisk. PO Schmitt wanted to allow § 87(2)(b) to keep his hands in his pockets because it was cold out, but wanted to confirm that nothing was in his pockets.

PO Oh (Board Review 09) and PO Schmitt observed § 87(2)(b) in the park and did not receive a call in regards. § 87(2)(b)'s hands were in his pockets during the entire conversation with officers. Neither PO Oh nor PO Schmitt asked § 87(2)(b) to take his hands out of his pockets. While sitting on the bench, § 87(2)(b) was fidgeting, rocking his body back and forth. This made PO Oh concerned that § 87(2)(b) might have a weapon. PO Oh did not observe any bulges on § 87(2)(b). Neither PO Oh nor PO Schmitt asked § 87(2)(b) if he had any weapons on

him. PO Oh asked PO Schmitt to frisk § 87(2)(b) while he wrote the summons because § 87(2)(b) was fidgeting with his hands in his pockets. PO Oh did not see where PO Schmitt frisked § 87(2)(b). Nothing was recovered from the frisk.

In PO Oh's BWC footage, § 87(2)(b)'s hands are seen outside of his pockets at the beginning of the interaction. § 87(2)(b) does not appear to make any movements towards his waistband. At 1:24 in PO Oh's BWC footage, PO Oh tells PO Schmitt to "toss" § 87(2)(b). § 87(2)(b) is sitting on the bench the entire time up until PO § 87(2)(b) asks him to stand up. At 2:05 in PO Schmitt's first BWC, he asked § 87(2)(b) to stand up and if he has "anything" on him. § 87(2)(b) informs PO Schmitt that he does not have anything on him. PO Schmitt frisks § 87(2)(b) but it is unclear where he touched during the frisk because the BWC is close to § 87(2)(b)'s body and thus out of view. At 1:45 in PO Oh's BWC footage, PO Schmitt frisks § 87(2)(b) in the waistband area.

The courts have held that a defendant's hand movement alone cannot justify a frisk. Behavior which is susceptible of innocent as well as guilty interpretation cannot constitute probable cause, People v. Miller, 121 A.D.2d 335, 1986, N.Y. (Board Review 10).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

- This was the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 13).
- PO Oh has been a member of service for six years and has been a subject in six CCRB complaints and 10 allegations, none of which were substantiated. § 87(2)(g)
- PO Schmitt has been a member of the service for five years and has been a subject in three CCRB complaints and eight allegations, none of which were substantiated. § 87(2)(g)

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: _____

Investigator: _____

Signature	Print Title & Name	Date
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Squad Leader: _____

Signature	Print Title & Name	Date
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Reviewer: _____

Signature	Print Title & Name	Date
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